Supreme Court, U. S.
FILED
JAN 12 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-76

STATE OF SOUTH DAKOTA

Petitioner,

v.

DONALD OPPERMAN,

Respondent.

BRIEF OF RESPONDENT

ROBERT C. ULRICH
Box 514
Vermillion, South Dakota 57069

Attorney for Respondent
(Court-appointed)

LEE M. McCAHREN
Attorney-at-law
Vermillion, South Dakota 57069

JOHN F. HAGEMANN
Attorney-at-law
Vermillion, South Dakota 57069

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

	Page
STATEMENT OF CASE	1
ARGUMENT	4
I. A DETAILED "INVENTORY" OF A PRIVATELY OWNED AUTOMOBILE BY POLICE OFFICIALS CONSTITUTES A "SEARCH" WITHIN THE MEANING AND SCOPE OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION	4
II. A WARRANTLESS BLANKET SEARCH CONDUCTED BY POLICE OFFICIALS INTO THE CLOSED CONFINES OF A PRIVATELY OWNED AUTOMOBILE WHICH HAS BEEN TAKEN INTO THEIR BARE CUSTODY FOR A MERE PARKING VIOLATION DOES VIOLENCE TO THE FOURTH AMENDMENT STANDARD AGAINST "UNREASONABLE SEARCHES AND SEIZURES," AS A PROTECTION OF THE CITIZENRY AGAINST UNWARRANTED INVASIONS BY GOVERNMENTAL OFFICIALS	8
III. CONCLUSION	17

TABLE OF AUTHORITIES

Cases:

Brinegar v. United States, 338 U.S. 160 (1949)	10
Cady v. Dombrowski, 413 U.S. 433 (1973)	4,9,12,14
Carroll v. United States, 267 U.S. 132 (1925)	9,10,12,14
Camara v. Municipal Court, 387 U.S. 523 (1967)	6,7
Chambers v. Maroney, 399 U.S. 42, (1970)	9,11
Chimel v. California, 395 U.S. 752 (1971)	11,14

	Page
Coolidge v. New Hampshire, 403 U.S. 443 (1971)	12,14
Cooper v. California, 385 U.S. 443 (1971)	11,12,14,15
Dyke v. Taylor Implement Manufacturing Co., 391 U.S. 216 (1968)	11,12
Harris v. United States, 390 U.S. 234 (1968)	4,13
Husty v. United States, 282 U.S. 694 (1931)	10
Katz v. United States, 389 U.S. 347 (1967)	9
Mapp v. Ohio, 367 U.S. 643 (1961)	8
Mozzetti v. Superior Court of Sacramento County, 4 Ca. 3d 699, 94 Ca. Rptr. 412, 484 P.2d 84 (1971)	4,5,6,7,16
Preston v. United States, 376 U.S. 364 (1964)	10
Scher v. United States, 305 U.S. 251 (1938)	10
Terry v. Ohio, 392 U.S. 1, (1968)	5,7
Trupiano v. United States, 334 U.S. 699 (1938)	8
United States v. Lawson, 487 F.2d 468 (8th Cir. 1973)	6,7,15,16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-76

STATE OF SOUTH DAKOTA

Petitioner,

v.

DONALD OPPERMAN,

Respondent.

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Donald Opperman, hereinafter referred to as the respondent was a student attending the University of South Dakota at Vermillion (R. 111). During the early morning hours of the 10th day of December, 1973, his automobile was parked in a Vermillion business district. After several attempts to start the car at this time, the respondent left it parked in a regular metered stall on the main street of Vermillion and returned to his dormitory at USD. (R. 116,128). At this time the windows of the vehicle were closed and the doors and trunk were locked (R. 73,76).

During the early morning hours of the 10th day of December, 1973, Vermillion police officer William Herrick issued a parking ticket to the respondent's automobile pursuant to a Vermillion Ordinance which prohibits parking in the downtown area from 2:00 A.M. to 6:00 A.M. (R. 61).

At approximately 10:00 A.M. on the morning of the 10th of December, 1973, Mrs. Violet Delaney, a metermaid for the City of Vermillion, issued another parking ticket to the respondent's vehicle for an expired parking meter violation (R. 66). After issuing this second ticket, Mrs. Delaney returned to the Vermillion Police Department and informed Vermillion police officer Robert Frank that the respondent's vehicle had been issued this additional parking ticket (R. 67).

Officer Frank then went to where the respondent's vehicle was located and inspected the two tickets (R. 72). After examining these he called for the assistance of a tow truck operator (R. 72). Prior to this time, Officer Frank had not made any attempt to ascertain, locate, or notify the registered owner of the vehicle that it was to be towed (R. 99). However, the record is uncontested that the vehicle bore current South Dakota license plates (R. 62). The vehicle was then towed to the City impound lot (R. 73). At this time, the vehicle was locked and all windows were rolled up (R. 73,76). Officer Frank ordered the tow truck operator to break into respondent's automobile (R. 73). The tow truck operator succeeded in unlocking the doors to the car with a "tool" (R. 76). Frank then seized a number of articles from within the interior, among which were a watch that was located on the dashboard, a can of oil, sparkplugs and a pair of pliers (R. 77). These articles were all in plain view of Officer Frank and are not in

issue for the purposes of the instant case (R. 76). Although Officer Frank had secured all articles of value within his area of plain vision, he proceeded to further his search of the vehicle by entering into the closed console (R. 77-78).

Upon breaking into the closed console of the respondent's automobile, Officer Frank examined and removed various items of the respondent's personal property, including his personal checking account records, blank checks, class ring, and other items (R. 77-78). Also seized from the vehicle's console was a clear plastic bag containing marijuana in a quantity of less than one ounce and other smoking paraphenalia (R. 78-79). Prior to this seizure, Officer Frank did not suspect nor was he in possession of any information by which to form a suspicion that the vehicle contained marijuana (R. 78). The respondent was not under arrest at the time this search was conducted (R. 78). The officer had no probable cause to believe that marijuana was present in the automobile (R. 78). And no attempt, whatsoever, had been made to determine who the registered owner of this vehicle was prior to or at the time that the Vermillion Police Department broke into this car. The ease in which the owner could have been identified and notified is shown by the testimony of Officer Frank in the transcript of the trial (R. 98,99).

ARGUMENT

I.

A DETAILED "INVENTORY" OF A PRIVATELY OWNED AUTOMOBILE BY POLICE OFFICIALS CONSTITUTES A "SEARCH" WITHIN THE MEANING AND SCOPE OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

This Court has not specifically decided whether an inventory procedure is a search. In *Cady v. Dombrowski*, 413 U.S. 433 (1973), a footnote to the majority opinion noted the question and stated it would not decide the issue because respondent had conceded the intrusion constituted a search. *Harris v. United States*, 390 U.S. (1968), indicates that an inventory would be regarded as a search;

> "The admissibility of evidence found as a result of a *search* under police regulation is not presented by this case." 390 U.S. at 236, 88 S.Ct. at 903 (emphasis supplied).

This question was answered affirmatively by the California Supreme Court in the case of *Mozzetti v. Superior Court of Sacramento County*, 4 Cal. 3d 699, 94 Cal. Rptr. 412, 484 P. 2d 84 (1971). The opinion in *Mozzetti* is compelling and well-reasoned. In that case the petitioner was involved in a two-car collision. She sustained injuries in the accident and was promptly removed to the hospital by an ambulance. When the police arrived at the scene, they determined that petitioner's vehicle was blocking the roadway and made arrangements to have the vehicle towed to police storage pursuant to California statutory authority.

In accordance with standard procedure, an officer of the Sacramento Police Department was instructed to prepare an inventory of the contents of petitioner's automobile before it was towed to police storage facilities. In the course of the inventory the officer saw a small suitcase in the back seat of the car. Finding the suitcase unlocked, he opened it, apparently to determine if it contained any articles of value. Inside he found a plastic bag containing a quantity of marijuana. Because petitioner's automobile was a convertible, at the conclusion of the inventory several items found in the car's interior, including the suitcase, were locked in the trunk. The car was then towed to a police storage garage and the keys were later turned over to the petitioner. The marijuana was seized and formed the basis of a criminal prosecution. Petitioner's motion to suppress was denied by the trial court. The California Supreme Court reversed.

The prosecution in *Mozzetti* sought to validate the inventory practice by distinguishing between an inventory and a search. The argument was that the purpose of a search is to seek contraband or evidence of guilt which has been concealed in order that it may be used in the prosecution of a criminal action, while the purpose of an inventory is entirely different. In rejecting such a distinction, the Court, in *Mozzetti*, observed that such a concept was expressly rejected by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. (1968).

> In our view, the sounder course is to recognize that the Fourth Amendment governs all intrusions by agents of the public upon personal security, and to make the scope of the particular intrusion, in light of all the exigencies of the case, a central element in the analysis of reasonableness. *** This

seems preferable to an approach which attributes too much significance to an overly technical definition of "search" *** 392 U.S. at 18 U.S. 15.

See also, *Camara v. Municipal Court*, 397 U.S. 523 (1967):

"It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." 387 U.S. at 530.

In finally disposing of the question of whether an "inventory" is a "search" within the meaning of the Fourth Amendment, *Mozzetti* states:

It seems undeniable that a routine police inventory of the contents of an automobile involves a substantial invasion into the privacy of the vehicle owner. Regardless of profession, benevolent purposes and euphemistic explication, an inventory search involves a thorough exploration by the police into the private suitcases, briefcases, sealed packages, purses – anything left open or closed within the vehicle – is subjected without limitation to the prying eyes of authorities. Merely because the police are not searching with the express purpose of finding evidence of crime, they are not exempt from the requirements of a reasonableness set down in the Fourth Amendment. Constitutional rights may not be evaded through the route of finely honed but nonsubstantive distinctions. 484 P.2d at 88, 94 Cal. Rptr. at 416.

The Eighth Circuit Court of Appeals also had an opportunity to decide this issue in *United States v. Lawson*, 487 F.2d 468 (8th Cir. 1973) and stated that: "... to consider an inventory procedure not to be a "search" does violence to the concept of the Fourth Amendment as a protection of the privacy of the

citizenry against unwarranted invasions by government officials." 497 F.2d at 472.

The Eighth Circuit Court of Appeals, in *Lawson*, upheld the lower court's holding which granted the defendant's motion to suppress evidence in the form of a revolver that was seized from the trunk of the defendant's impounded motor vehicle by the local police officers in Aberdeen, South Dakota. That Court held that where the only justification for the search of an automobile was its mere possession by the police, the gun that was found in the locked trunk was improperly seized and was not admissible in evidence.

To consider an inventory not a "search" within the meaning of the Fourth Amendment, this Court would be placing government officials in a better position when they have no reason to search. Under such a rule, a warrantless exploratory "inventory" will be allowed; but if a warrant were required, it would have to describe with particularity the things to be seized. Such an anomalous position would only lead to the encouragement of general fishing expeditions at the expense of the Fourth Amendment concepts. The respondent strenuously urges this Court to adopt the principles expressed in *Mozzetti*, *Lawson*, *Terry* and *Camara*, and hold that an inventory constitutes a "search" under the Fourth Amendment.

II.

A WARRANTLESS BLANKET SEARCH CONDUCTED BY POLICE OFFICIALS INTO THE CLOSED CONFINES OF A PRIVATELY OWNED AUTOMOBILE WHICH HAS BEEN TAKEN INTO THEIR BARE CUSTODY FOR A MERE PARKING VIOLATION DOES VIOLENCE TO THE FOURTH AMENDMENT STANDARD AGAINST "UNREASONABLE SEARCHES AND SEIZURES," AS A PROTECTION OF THE CITIZENRY AGAINST UNWARRANTED INVASIONS BY GOVERNMENTAL OFFICIALS.

The Fourth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643 (1961), provides that:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the person or things to be seized.

The historical basis for the warrant requirement expressed in this amendment has been noted by this Court:

> The people of the United States insisted on writing the Fourth Amendment into the Constitution because sad experience had taught them that the right to search and seize should not be left to the mere discretion of the police, but should as a matter of principle be subjected to the requirement of previous judicial sanction wherever possible. *Trupiano v. United States* 334, U.S. 699, 709-10 (1948).

From the language of the Fourth Amendment and its historical foundations, the general principle has been formulated that a lawful search requires a warrant to be issued. However, recognizing the existence of various factual situations that may either vitiate the need for a warrant or make it impractical for governmental officials to obtain one, this Court has carved out certain limited exceptions to the warrant requirement. Among these exceptions are consent searches, searches incident to a valid arrest, emergency searches, searches involving exigent circumstances to prevent the destruction of evidence or to seize evidence that is dangerous to police officers or other persons, and searches conducted while in hot pursuit. Except for these few well-delineated exceptions, warrantless searches have been considered "per se unreasonable," *Katz v. United States*, 389 U.S. 347, 357, 885. Ct. 507, 19 L.Ed.2d 576 (1967). The automobile has, however, been treated somewhat differently than other types of property: "for purposes of the Fourth Amendment there is a Constitutional difference between houses and cars," *Chambers v. Maroney*, 399 U.S. 42, 52, (1970). These distinctions stem from both the highly mobile character of the automobile and the fact that, "the extensive, and often noncriminal contact with automibiles will bring local officials in 'plain view' of evidence, fruits, or instrumentalities of a crime, or contraband." *Cady v. Dombrowski*, 413 U.S. 433, 442, (1973).

The prior cases heard by this Court involving searches of automobiles have almost exclusively dealt with the presence of probable cause. In *Carroll, v. United States*, 267 U.S. 132, (1925) this Court, while interpreting federal statutory provisions contained in the Volstead Act, enunciated the "mobility concept" of the

automobile as permitting or creating an exception to the warrant requirement when coupled with the presence of probable cause. In that case, this Court upheld the warrantless search of the vehicle where government agents had seized contraband concealed behind the back seat. The vehicle had been stopped on the highway at the time the search occurred and this emphasized the fact that the agents had probable cause to believe the vehicle contained contraband.

Following *Carroll*, this Court upheld various other automobile searches in the absence of a valid search warrant, *Husty v. United States*, 282 U.S. 694, (1931), *Scher v. United States*, 305 U.S. 251 (1938) and *Brinegar v. United States*, 338 U.S. 160 (1949). All of these cases were decided upon the fact that the government officials had probable cause to search and the vehicle was easily moveable at the time the search occurred.

In 1964, this Court, in *Preston v. United States*, 376 U.S. 364, (1964) held unconstitutional a warrantless search of an automobile after the defendant had been arrested for vagrancy and the defendant's automobile towed to the police garage and searched. The Court distinguished *Preston* from the *Carroll* type search on the grounds that no statutory authority existed under which to conduct the search in *Preston*, there was no danger existing that the automobile was easily moveable in *Preston*, and that the police were not possessed with probable cause to believe the vehicle contained contraband in *Preston* at the time the search was conducted.

In *Preston* this Court reiterated the Fourth Amendment distinctions between searches of automobiles and searches of fixed structures but emphasized the fact

that any search of an automobile must still be reasonable to satisfy Fourth Amendment standards.

> Common sense dictates, of course, that questions involving searches of motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses. For this reason, what may be an unreasonable search of a house may be reasonable in the case of a motorcar. But even in the case of motorcars, the test is was [sic] the search reasonable. 376 U.S. at 366-367.

The Supreme Court in a 5-4 decision in *Cooper v. California*, 386, U.S. 58 (1967), held a warrantless search conducted after a lawful arrest met Fourth Amendment standards. A careful reading of *Cooper* reveals that the Court relied on the closeness of the relationship between the reason the vehicle was taken into police custody (i.e., for forfeiture proceedings) and the reason for Cooper's arrest (a narcotics violation). In that case this Court pointed out:

> . . . . the officers seized petitioner's car . . . because of the crime for which they arrested him . . . . Their subsequent search of the car was closely related to the reason his car had been impounded, and the reason it was being retained. 386 U.S. at 61.

Cooper is easily distinguishable from the instant case in that the reason the petitioner's vehicle was impounded (i.e., parking violation) was in no way related to the petitioner's subsequent arrest nor was the vehicle impounded for forfeiture action.

In more recent cases decided by this Court, *Chimel v. California* 395 U.S. 752 (1969), *Dyke v. Taylor Implement Manufacturing Co.*, 391 U.S. 216, (1968); and *Chambers v. Maroney* 399 U.S. 42 (1970), the

Court returned to the standards set forth in *Carroll;* the mobility of the vehicle and the existence of probable cause at the time the search occurred.

In *Coolidge v. New Hampshire,* 403 U.S. 443, (1971) this Court, relying upon *Dyke v. Taylor Implement Co., supra,* held that a warrantless search of the defendant's automobile which had been taken into police custody could not be justified in light of the Fourth Amendment standards. The Court once again relied upon a factual situation that lacked both probable cause and exigent circumstances.

In *Cady v. Dombrowski,* 413 U.S. 433 (1973), this Court held that the warrantless search of an automobile, which the officers reasonably believed to contain a gun, was not an unreasonable search. In *Cady* the Court emphasized the factual considerations. First, the vehicle in *Cady* was disabled as the result of an accident and constituted a nuisance along the highway. The driver, being intoxicated and later comatose, could not have made arrangements to have the car towed and stored. Second, the police conducted the search for the revolver to protect the public from the possibility that it might fall into untrained or malicious hands. The motorist in *Cady* was a Chicago policeman. The police of Kewaskum, Wisconsin, believed he was required by regulation to carry his service revolver at all times. They, therefore, had reason to believe that the vehicle contained the revolver when it was not found on his person.

To agrue that the holding announced in *Cady* is applicable to the instant case ignores the critical factual distinction between the two cases. In the instant case, the vehicle was not in a position where it could be considered a public nuisance. There is no indication

that Mr. Opperman could not have made arrangements for the safekeeping of the vehicle at the time or after it was towed from the Vermillion street. And most important, there is no reason for the Vermillion police to believe that the car contained anything that may threaten the safety of the public.

The primary case involving an inventory search that has been heard by this Court was *Harris v. United States* 390 U.S. 234 (1968). In *Harris* the defendant's automobile had been seen leaving the site of a robbery. The car was traced and the defendant was arrested as he was entering his automobile. At this moment, the windows of the car were open and a door locked. After the automobile had been towed to the impound area, and, pursuant to a police regulation, an inventory of the articles contained in the vehicle was taken. The police officer placed a property tag on the steering wheel, rolled up the windows and locked all the doors. While the police officer was rolling up the windows and locking the doors, he discovered a registration card, which lay face up on the metal stripping over which the door closed. This Court held that the registration card was not seized in violation of the Fourth Amendment because the registration card was in "plain view." This Court said,

> Once the door had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced into evidence. *Harris v. United States, supra* at 236.

The respondent does not take issue with the holding expressed in *Harris* but wishes to emphasize that

decision is based upon the "plain view" exception to the warrant requirement. In the instant case, not only does the record clearly reflect that the contraband seized from the automobile was not seized as the result of a plain view discovery, but also the state, in its brief, concedes that the intrusion had gone beyond the area of plain view. Brief of Petitioner, at 7-8.

It becomes apparent after examining the holding is the above-cited case that the Fourth Amendment standard of reasonableness must be applied to automobile searches. This standard of "reasonableness" has been restricted to uphold warrantless searches in only a few limited circumstances. The *Carroll* type search which requires the existence of probable cause and mobility at the time of the search. A search based upon a reasonable belief that the vehicle contained a weapon that may be harmful to the safety of the police, *Cady v. Dombrowski* (supra); searches incident to a lawful arrest; *Chimel v. California* (supra); and automobiles lawfully held by the police as evidence of crime preparatory to instituting forfeiture proceedings may be searched by police without a warrant, as in *Cooper v. California* (supra).

It becomes apparent after examining the holdings of the above cited cases that, "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears," *Coolidge v. New Hampshire* (supra) at 462. It also becomes apparent that the Fourth Amendment standard of reasonableness must be applied to automobile searches. In applying this appropriate test of reasonableness, it is the respondent's contention that this Court must balance the interests of the police with those of the drivers whose automobiles are searched.

It is not necessary for this Court to determine all of the reasons for, and natures of, police custody that might justify a search; here the only justification for the search is bare police custody of the vehicle. Obviously the police have an interest in safeguarding themselves against groundless claims. Just as obviously, and more importantly in terms of the Fourth Amendment, owners and operators of motor vehicles have an interest in safeguarding their possessions from unreasonable police intrusions. A rule that upon a showing of a legitimate governmental interest, the constitutional protections of citizens must give way, would eliminate those protections in the very situations for which they were intended. *United States v. Lawson*, 187 F.2d 468, at 475 (8th Cir. 1973).

For the police practice considered in this case to be found reasonable under the Fourth Amendment, absent a warrant or falling within a recognized exception to the warrant requirement, there must be minimal interference with the individual's protected rights. It can only be reasoned that a police duty to safeguard the owner's property does not automatically give the police the right to search.

> Lawful custody of an automobile does not itself dispense with the constitutional requirements of searches thereafter made of it, ... the reason for and the nature of the custody may constitutionally justify the search. *Cooper, supra*, 61.

The respondent would urge this Court to adopt the position taken by the California Supreme Court in addressing the contention that the inventory procedures are necessary and reasonable:

> This contention is rebutted by recognition of the vehicle owner's countervailing interest in maintain-

ing the privacy of his personal effects and preventing anyone, including the police, from searching suitcases, and other closed containers and areas in his automobile at the time the police lawfully remove it to storage. In weighing the necessity of the inventory search as protection of the owner's property against the owner's rights under the Fourth Amendment, we observe that items of value left in an automobile to be stored by the police may be adequately protected merely by rolling up the windows, locking the vehicle doors and returning the keys to the owner. The owner himself, if required to leave his car temporarily, could do no more to protect his property. *Mozzetti v. Superior Court*, 94 Cal. Rptr. at 417, 484 P.2d at 89; accord *United States v. Lawson*, *supra*, at 476.

The State has also argued upon the record of the trial court, and in their brief submitted to this Court, that such a search as occurred in the instant case can be justified merely because a departmental regulation existed which provided that all impounded vehicles are to be inventoried. To allow such an argument to pass Constitutional muster would do violence to Fourth Amendment standards. It is conceivable that many vehicles could be searched without a warrant and without probable cause if the police maintained a highly insecure impound area, employed diligent meter-maids and sought the services of only cooperative and capable tow truck operators. To uphold this search would be to endorse such activities. The following language from *Lawson* is helpful:

> It is not as obvious to us, as it appears to be to some courts, why the inventory procedure offers the police any more protection against false claims than would a standard policy of locking the car

> and returning the keys to the owner; or allowing the owner to make arrangements himself for the removal and storage of his vehicle. 487 F.2d at 476 (8th Cir. 1973).

In the instant case there were no circumstances to justify the search of the contents of the closed console without a warrant. The search was not incident to a lawful arrest, based on probable cause to believe the vehicle contained contraband, or justified by the peculiar nature of the police custody involved. Nor were there exigent circumstances which made the search reasonable and necessary. The respondent would urge this Court to hold that under the factual situation present in the instant case, the intrusion into the closed console of his locked automobile does not meet Fourth Amendment standards of reasonableness.

III.

CONCLUSION

An inventory of an automobile constitutes a search within the scope and meaning of the Fourth Amendment. To consider such a procedure not to be a "search" would do violence to the concept of the Fourth Amendment as a protection of the privacy of the citizenry against unwarranted invasions by government officials. Regardless of any professed benevolent purposes and euphemistic explications, an inventory search involves a thorough exploration by the police into the private property of an individual. Merely because the police are not searching with the express purpose of finding evidence of crime, they are not exempt from the requirements of reasonableness set down in the Fourth Amendment.

The State's position that an inventory search conducted according to a police policy is necessary to protect and safeguard both the property interests of the owner and the interests of the police against unfounded claims is based upon fallacious reasoning. The police, in this case, are held to a standard of slight care in safeguarding the respondent's automobile and its contents. All that would have been required of them to satisfy this duty would have been to roll the windows and lock the doors of the vehicle. Any further intrusion into the closed confines of the automobile can not be justified when measured against all the circumstances, without giving effect to the presence or absence of the police regulation. When the police conducted the search into the closed console of the automobile, the Fourth Amendment standard of reasonableness was breached.

The State has not argued that the search of the respondent's vehicle was one that was justified by one of the few well-delineated exceptions to the warrant requirement. In fact, the record clearly establishes that no exception to the warrant requirement existed in the instant case. The search which occurred in this case clearly fails to meet any established exception to the warrant requirement. Also, this search clearly fails to meet any standard of reasonableness set by the Fourth Amendment.

To hold otherwise would be to allow any governmental official the freedom to break and enter into the closed confines of a vehicle merely because the vehicle had been overparked.

The Supreme Court of South Dakota's holding that the inventory search which occurred in the instant case

did violate Fourth Amendment standards should be upheld.

Respectfully submitted,

ROBERT C. ULRICH
Vermillion, South Dakota
Attorney for Respondent
(Court-appointed)